

SOUTH COAST, INC.,)	AGBCA No. 1999-179-1
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Appellant)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

June 25, 2002

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge VERGILIO.

On July 21, 1999, the Board received this appeal filed by South Coast, Inc., of Ketchikan, Alaska (contractor). The respondent is the U. S. Department of Agriculture, Forest Service (Government). The contracting officer had denied in full the contractor's claim (while noting that he could not consider a portion of the claim as barred by a release) to be reimbursed an additional \$285,078 on the Shamrock South Roads project, contract No. 50-0109-7-00348. The contract required approximately 16.4 miles of road construction (and miscellaneous related work) in the Stikine area of the Tongass National Forest on Kupreanof Island in Alaska. The contractor contends that it encountered differing site conditions in the form of unexpected excessively hard rock at one of the Government-designated sources (for local material to be used in the roadway construction), and material not suitable for use at another of the Government-designated sources. The contractor also maintains that it is entitled to additional compensation for increased costs incurred when other Government-designated sources failed and it utilized non-designated sources.

The Board has jurisdiction over this timely-filed appeal pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. ' ' 601-613, as amended. The parties have opted not to have a hearing, submitting the case on the written record (Board Rule 11). The evidentiary record is the appeal file, as supplemented. Each party has submitted a brief and reply brief, with a discussion of the facts and legal arguments.

The contractor seeks relief pertaining to three distinct areas of performance under its fixed-price contract. One area involves the designated source referred to as the hard rock pit, given the relative hardness of the excavated material in comparison to the materials at other sources encountered during the project. The contractor contends that the source constitutes a differing site condition (type 2); it seeks to recover what it describes as its extra costs of drilling and removal (that is, its alleged costs at the hard rock pit incurred in excess of those calculated utilizing its average costs at the other sources). The differing site condition claim fails on the existing record, which does not establish that the hard rock conditions were of an unusual nature, or differed materially from those generally recognized as inhering in the work of the character provided at the project site. Thus, the contractor has not established entitlement to relief. In addition, the record does not support the claimed quantum of recovery. That is, for developing all of the pits, the contractor-s alleged average costs do not differ significantly from what it anticipated. Finally, having failed to prove a differing site condition, the contractor has not established entitlement to its claimed related costs of generating fines from the material, tire wear, rock testing and extra camp costs.

Another area of requested relief relates to the use of non-designated sources, when designated sources were not suitable. The record fails to support the contractor-s claim in terms of entitlement and quantum. That is, the record does not detail unreimbursed efforts. The Government modified the contract to compensate for additional trucks and an increased amount (per cubic yard mile) for some of the hauling from the non-designated sources. The contractor has not demonstrated that equipment or operators were idle, or that any of its alleged increased costs remain unreimbursed.

A third area of requested relief involves the designated source referred to as the red rock pit. The contractor seeks to be paid for what it describes as unused material from the red rock pit which it produced but did not use because of the marginal suitability of the rock. As the contracting officer correctly concluded, the contractor is barred from relief because of a release the contractor signed, which did not reserve this item of relief, and because factually and legally the contractor has not demonstrated that the material was unsuitable for use. Further, the contractor has not demonstrated that it incurred any particular cost to produce the material, which apparently was produced in the course of generating the material from the red rock pit which was used.

The contractor has failed to establish the facts needed to prevail on any claim. Accordingly, the Board denies the appeal.

FINDINGS OF FACTThe contract

1. As a result of a sealed bid competition, and after receiving a verification of the bid, the Government awarded the underlying contract, No. 50-0109-7-00348, to the contractor on February 27, 1997. The contract, designated the Shamrock South Roads project, required the construction of approximately 16.4 miles of road (and miscellaneous work) in the Stikine area of the Tongass National Forest in Alaska (Exhibits 5.5, 5.6, 5.7, 5.9, 7.3 at 954, 959) (all exhibits are in the appeal file). The contract contains thirty-five distinct item numbers for payment; the sum of the contract line item prices is \$3,042,756.40 (Exhibits 7.2 at 948, 7.3 at 971, 973, 975-76).

2. In the description of the project, the solicitation and contract state:

The intent of the contract is to provide for the complete construction of the project described in the contract. Unless otherwise provided, the Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies and perform all work required to complete the project in accordance with the drawings, specifications, and provisions of the contract. Payment for contract work will be made only for and under those pay items included in the Schedule of Items. All other work and materials will be considered as incidental to and included in the payment for items shown.

(Exhibit 7.3 at 982.)

3. In two clauses immediately above the contractor's signature, the solicitation and contract highlight two aspects of the contract. The Measurement and Payment clause provides that the Measurement and payment for contract work will be made only for and under those pay items included above in THE SCHEDULE OF ITEMS. All other work and material will be considered incidental to and included in the payment of the pay items in THE SCHEDULE OF ITEMS. In the Certification of Site Visit clause, the contractor acknowledges that it had visited the site and/or satisfied itself as to the existing conditions at the site of work. (Exhibit 7.3 at 976.)

4. Some of the contract work involves pit and quarry development, that is, removing overburden and excavating rock from designated material sources (rock quarries) for use on the roadway. For each of six designated sources, the contract specifies the haul route to be utilized for calculating payment on a cubic yard per mile basis for hauling the material to the new road. (Exhibits 7.3 at 971, 1008, 1038-40, 1073 (& H.31), 7.4 at 1176.)

5. The contract, through referenced specifications (Exhibit 7.3 at 983 (& C.2.a.1, C.2.b (' 203)), 984 (& C.2.b (' 611)), 985 (& C.2b (special note))), addresses the designated sources:

Designated Sources. Sources of local materials designated in the SPECIAL PROJECT SPECIFICATIONS or SHOWN ON THE DRAWINGS are guaranteed by

the Government for the quality and quantity of material in the source. The contractor shall determine the equipment and work required to produce the specified product. The contractor shall submit test results and a Certificate of Compliance that states that the gradation of the aggregate meets the contract requirements.

The contractor shall utilize all suitable material in the source. The designation of a source will include the right of the contractor to use areas SHOWN ON DRAWINGS for the purposes designated (that is, plant sites, stockpiles, haul roads). Unless otherwise indicated or approved, no additional operating area will be allowed, and the contractor will be required to operate in the confines of the area(s) designated.

The weight/volume relationship used for determination of the designed quantities of material in designated sources subject to weight measurement are SHOWN ON THE DRAWINGS.

Should the designated source, due to causes beyond the control of the contractor, contain insufficient suitable material, the Government will provide another source with an adjustment in contract price.

(Exhibit 109 at 16 (& 105.06, material sources).)

6. Specifically addressing the development of pits and quarries, the contract includes the following language:

The Contractor shall use controlled blasting techniques for all pit and quarry excavations that require blasting. Controlled blasting is defined as the controlled usage of explosives and blasting accessories in appropriately sized and spaced drill holes for the purpose of producing appropriate rock breakage and minimizing adjacent landscape damage, ground vibration, fly rock, overbreak, and material movement outside of designated clearing limits.

(Exhibit 7.3 at 1038 (& 611.02).) Further, the contract specifies that pit and quarry development will not be measured for payment and that payment for the development work is subsidiary to the applicable pay item (Exhibit 7.3 at 1040 (&& 611.11, 611.12)). Apart from the general guarantee of suitability for use on the project, the contract does not indicate that any general or particular type of rock will be found in the designated sources or that the contractor should anticipate any general or particular level of difficulty in removing material from the designated sources.

7. Regarding the method of measurement for haul (taking material from pit and quarry sources to the roadway being constructed), the contract directs:

Payment for haul is allowed for Borrow Excavation only. Haul for Excavation and Riprap is considered incidental to those pay items and will not be measured for payment.

(Exhibit 7.3 at 1008 (& 205A.02).)

8. The specifications contain paragraphs detailing rights in and use of materials found or produced in the forest. One such paragraph provides:

Materials produced or processed from Government lands in excess of the quantities required for performance of this contract are the property of the Government. The Government is not obligated to reimburse the contractor for the cost of their production.

(Exhibit 109 at 15 (& 105.05(b)).)

9. The contract contains a Differing Site Conditions clause, 48 CFR 52.236-2 (APR 1984), stating in pertinent part:

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(Exhibit 7.3 at 1057 (& H.4).) The contract also contains a Site Investigation and Conditions Affecting the Work clause, 48 CFR 52.236-3 (APR 1984) (Exhibit 7.3 at 1057-58 (& H.5)).

Performance, conditions encountered, and assumptions

10. During performance, the contractor obtained suitable material from three of the six designated sources; the contractor explored, but did not develop three designated sources, because they did not provide sufficient material. The Government authorized the contractor to develop other sources. The contractor developed five non-designated sources. The haul distances from these five non-designated sources varied from the designated sources in the contract. (Exhibits 5.45 at 210, 224 at 6).

11. This dispute focuses upon the contractor's efforts at one designated source referred to as the Ahard rock@ pit and at another designated source referred to as the Ared rock@ pit, as well as the contractor's efforts involving non-designated sources when designated sources were not utilized.

Hard rock pit

12. One of the designated sources, referenced here as the hard rock pit, is the focus of much of this dispute. The contractor began clearing the overburden from this pit on October 13, 1997 (Exhibit 6.2 at 359). A Government daily diary for October 16, 1997, provides some information as to the existing site condition: An individual Aspent day stripping [hard rock pit], OB [overburden] up to 6' deep in back end, just duff in other places. Rock looks good all over the pit area.@ (Exhibit 6.2 at 363.) Drilling (of holes for the placement of explosives) began on October 17 (Exhibit 6.2 at 365).
13. On November 1, the contractor made its first shot on the hard rock pit. As noted in the Government's daily diary of that date: AMuck pile appears well broken, not much oversize@ (Exhibit 6.2 at 381).
14. On Thursday, November 13, as noted in the Government's daily diary, the contractor had exhausted the shot rock in the hard rock pit. The drillers finished drilling for the second production shot. The contractor planned to shoot on Saturday. (Exhibit 6.2 at 396.)
15. Previously having made the second shot, the contractor gave the Government oral and written notice, on November 20, 1997, that it deemed this designated source to be a differing site condition. The contractor specified, regarding the hard rock pit: AThe rock in the quarries we have developed, so far on this job, is different from what has been developed in the area before. The extra drilling time, extra powder, extra finishing time and other costs of developing and using this rock should be considered as a change of conditions.@ The contractor noted, however, that its second shot of the source looked good. (Exhibits 5.27 at 104, 5.28 at 105.)
16. On November 24, 1997, both the contracting officer's representative and the geotechnical engineer who conducted the pre-solicitation site investigation for the Government (this geotechnical engineer is the Government's expert in this appeal) (Exhibit 100 at 1-2 (& 1-2)) conducted a site investigation in response to the differing site condition allegation. In a report, bearing a signature and date of Number 28, 1997, of his findings and conclusions, the geotechnical engineer states, in pertinent part:

The material in the third quarry is harder than the first two sites that South Coast had developed, however, it is not significantly harder and falls within the variability of other quarry rock materials found in the Kake v[i]cinity. It is very similar to other existing quarries along the road system to the project. One example of this is the quarry at the intersection of FDR 6328 and FDR 6327. This site is littered with oversize along the quarry floor and was used for construction of a portion of the North Irish TS. road system. This had to have been exposed during site inspections before contract bids were submitted. So while the third site on the Bohemia project is harder and has a wider fracture spacing than the first two sites developed by South

Coast, it is not unusual that quarry sites vary in hardness and fracture spacing from one site to the next.

....

In conclusion, since the rock is suitable for construction, falls well within normal variability of fracture spacing and rock hardness found within the project area and since contractually the FS makes no warrant as to material type, I find no basis to support a Changing Site Condition for this quarry.

(Exhibit 5.30 at 107.)

17. As the Government noted in the daily diary of Monday, November 24, the shot rock in the hard rock pit is exhausted; the next shot will occur on the weekend. Most of the crew will take Thanksgiving break beginning tomorrow, back up next Sunday. (Exhibit 6.2 at 408.) On Sunday, the third shot of the pit occurred. The Government noted in the daily diary: A main portion of shot broke well, but backwall has large back break rock. (Exhibit 6.2 at 411). On December 9, the contractor made its fourth shot of the hard rock pit (Exhibit 6.2 at 420).

18. After a winter shutdown, on March 24, 1998, the contractor began clearing more overburden from the hard rock pit (Exhibit 6.2 at 434-23-25, 429). On March 24, two drillers were on site to get drills ready and begin drilling (Exhibit 6.2 at 432). As the Government noted in the daily diary of Wednesday, April 1, 1998, the Government was told that

drillers had completed drilling approx 10,000 CY shot in pit expansion on [the hard rock pit]. They got done sooner than expected due to encountering softer rock in a portion of the shot. Driller also told me one of the drills had not been operating at 100% last fall, was fixed now.

(Exhibit 6.2 at 433). The contractor's records indicate that drilling occurred over four days, for the final shot (Exhibit 221 at 4). The final shot at the hard rock pit occurred on Saturday, April 4 (Exhibit 6.2 at 435).

19. The contractor provided additional notifications to the Government regarding its view of the hard rock pit and the conditions encountered. In a letter dated August 3, 1998, the contractor stated:

To recap, we feel we have been impacted by the extremely hard and abrasive rock at MP.90 of the 6314. The unusual nature of this material was not anticipated at the time of the bid and constitutes a Differing Site Condition. It is also questionable as to the quality of this material for its intended purpose. As a designated source, quality is guaranteed by the government. Failure to meet the quality test would subject it to the changes clause, defective specification FAR 52.243-4.

(Exhibit 5.41 at 121.)

20. In his written report prepared in lieu of expert testimony for the record in this appeal, the contractor's expert (a senior engineering geologist with a consulting company) describes some of the pertinent conditions of the project: To build roads into virgin country in which there are no existing quarries, very limited to no outcropping of rock, and only limited geologic mapping involves the taking of considerable risk for geotechnical claims from the Contractor (Exhibit 200 at 200967). This individual also states:

I was not present at any pre-bid site visits and do not have any direct knowledge of whether the condition of the Hard Rock Quarry were ascertainable or not. I have read discussions about the pre-bid site visit to the Hard Rock Quarry contained in the Appeal File (i.e. Tab 5.59, Sheet 000262). There appears to be a disagreement as to whether the outcrop seen in the area was a small, weathered, and highly fractured rock or an unweathered, blocky, massive rock. Without rock samples, photographs, or rock structural measurements, I cannot give a specific opinion on this subject.

Based on my experience of similar heavily forested areas in Southeastern and South-central Alaska, those natural exposures that do exist are generally very limited and are poor indicators of the bedrock encountered at depth. This is primarily due to severe weathering caused by the cool/cold wet climate in Southeastern Alaska. Very large partially exposed boulders on hillside or mountainside slopes are also commonly mistaken for bedrock. With the exception of the coast lines, there is little bedrock exposed on this part of Kupreanof Island. Inland, almost all of the exposed bedrock is in road cuts and existing quarry faces.

(Exhibit 200 at 200968).¹

¹ The contractor's expert also comments on his observation that the contract did not provide explicitly for encountering hard rock, in spite of the fact that hard rock claims are not uncommon in the construction business. This suggests to me that the [Government] also did not expect to find a Hard Rock Quarry of this nature on the project. (Exhibit 200 at 6). Although the contract does not specifically address encountering hard rock, the contract does contain a Differing Site Condition clause. The lack of more detail in the fixed-price contract does not shift risks to the Government, and does not mean that not uncommon claims for encountering hard rock should be or are

21. The contractor's expert concludes that conditions at the hard rock pit were unknown at the time the project was bid and were not ascertainable by a site visit. In the contractor's expert's written report, the three introductory paragraphs to a section captioned "that rock in the hard rock-quarry is unusual for the area" state:

In my opinion, the characteristics of the basalt encountered in the "Hard Rock" Quarry are unusual for rocks on this part of Kupreanof Island. This includes both the older rocks to the north of the project area and the younger rocks that were mapped within the road project limits. Having looked at the existing rock quarries in the area, and at the data available, I would not have anticipated such a "hard rock" pit occurring. I considered those factors discussed in the following two sections, 4.1 [Geology of Kupreanof Island, specifically along the road south of Kake and the Shamrock south roads project area] and 4.2 [Geology of the "hard rock" quarry, specifically in relation to the rock types found in the area], in coming to my conclusions.

Another factor is the general appearance of the quarry walls; the clean, distinct appearance of the rock due to a lack of soil created by weathering processes and the wide joint spacing. It is distinctly different in appearance from the quarry walls in the other pits that appeared "dirty" and had closer joint spacing.

Also, I noted that even the U.S. Forest Service referred to the quarry as the "Hard Rock Pit" (such as in Tab 5.51, Sheet 000228 and 000229). It was not referred to as the Gray Rock Pit, or the Basalt Pit but by its most distinctive characteristic compared to other pits in the area, "hard rock".

(Exhibit 200 at 200969).

22. In section 4.2 of his written report, the contractor's expert opines that

the characteristics of the basalt encountered at the "Hard Rock" Quarry are unusual for this part of Kupreanof Island. This includes both the older rocks to the north of the project area and the younger rocks that were mapped along the road project. Having looked at the existing rock quarries in the area, and at the available data, I would not have anticipated such a "hard rock" pit occurring. This quarry is also

successful.

unusual for andesite/basalt quarries in Alaska in general, with characteristics at the extreme upper limits for even these quarries. This opinion is based on my experience with similar andesite/basalt quarries elsewhere, observations of the exposed bedrock between Kake and the end of the Shamrock South Project, the results of rock testing, and U.S. Geological Survey geologic maps of the area. I believe the rock to be unusual based on the following criteria: rock type; rock strength; weathering, metamorphism, and deformation; fracture spacing; Alaska T-13 degradation results; and what I would expect to find after reviewing the geologic maps of the area.

(Exhibit 200 at 200970.)

23. In reaching his conclusion, the contractor's expert draws upon analysis and test results from what is not demonstrated to be a representative sample of rock collected from various pits in the area and from observations of existing quarries which had been exposed to weathering. This individual recognizes other factors concerning the site which are material to the analysis. Namely, as stated in section 4.1 of his written report,

The geology of Kupreanof Island is complex and varies widely from one side of the island to the other. . . . There are numerous types of rock found on the island, many are not well mapped or understood due to their structural complexity. Geologic rock units mapped by the U.S. Geological Survey on the northwestern portion of the island (north of the Shamrock South Road Project) are older Devonian to Tertiary Age sedimentary, volcanic and igneous rocks. The Shamrock South Roads Project lies within rock units generally mapped as relatively younger Tertiary to Quaternary Age volcanic, sedimentary and igneous rocks on the southwestern part of the Island. The U.S. Geological Survey indicates that the unit boundaries are not precisely located due to lack of exposure.

(Exhibit 200 at 200969.) In his rebuttal report, the contractor's expert specifies that it is incorrect to infer that because a rock is a basalt, it is hard. The report identifies the hard rock pit as consisting of a very slightly weathered to fresh, extremely strong basalt and another observed pit as containing a moderately weathered, weak to medium strong basalt. The report observes that there was no identified difficulty in excavating the latter pit, as opposed to the great difficulty in excavating the hard rock pit. @This type of variability is common in basalts.@ (Exhibit 201 at 201209.)

24. Although conclusions are different, the above observations of the contractor's expert largely coincide with these of the Government's expert:

Although the geologic unit boundaries on the USGS Map are not precise, the USGS Map is consistent with my observations and experience on Kupreanof Island that the geology of the area is complex, that it can and should be expected that rock types in the area will vary widely, and that younger and therefore fresher, less weathered volcanic rock can be expected south of Kake within and near the Project area. Based on field observation and the existing geologic mapping, finding younger and

potentially more fresh volcanic/basaltic materials in or near the Project area should be no surprise to a reasonably knowledgeable and experienced contractor.

(Exhibit 100 at 7-8.)

25. In his record of the site visit, the Government's expert, who explored the site for the Government prior to the release of the solicitation, described the hard rock pit as a "good pit site" with "exposed bedrock" and "overburden on [the] down side." The report indicates that there are no water problems and that there is "good bench above and below." The final entry for this source reads (beginning with an asterisk): "A* this is the best site in this area." The entries do not indicate or suggest the type of rock to be encountered. (Exhibit 104 at 31.)

26. An employee of the contractor, who served as the estimator and project manager, made two site visits (of one day and two days) prior to bidding. As he states in an affidavit:

Generally, I did not see anything that indicated any greater degree of difficulty than the average project. I did note a small knob of exposed rock near the designated source at [the hard rock pit]. There was not enough rock exposed for me to evaluate the particular characteristics of that rock. The rock exposed in the existing pits in the Big John Valley indicated average rock development costs.

(Exhibit 226 at 4 (& 9).)

27. In pricing the contract, the contractor's vice president states, in an affidavit, that he assumed that the borrow sources on the project would be generally easier than average for rock production. With this assumption (which differs from the conclusions of the estimator in the above finding) and utilizing other information and considerations, the contractor allocated equipment and crew size. (Exhibit 223 at 5-7 (&& 10-13).) More specifically,

I did not base SCI's selection of equipment and manpower on an assumption that the rock in the borrow sources was either entirely soft (leading to easy production) or entirely hard (resulting in difficult production). Instead, I believed that the rock would be on the easy end of the mixture of rock types that my experience in southeast Alaska, and on Kupreanof Island, had led me to expect.

(Exhibit 223 at 6 (& 11).) And,

The determination of the equipment spread to dedicate to this job was made based on what my experience led me to believe would be a mixture of rock types, including some rock that was easily developed. "Easily developed" meant to me that the rock would probably be highly fractured, possibly be significantly weathered, and easily drilled.

(Exhibit 223 at 6-7 (& 12).)

28. The contractor's vice president states, in an affidavit, that the contractor spent a total of \$191,712.26 in developing rock from the hard rock pit, and, as detailed in the contractor's job cost report (Exhibit 210 at 100854), a total of \$435,920.53 for developing rock from all of the pits. These figures reflect costs for supplies, equipment and labor for the contractor (excluding costs relating to the development of the initial pit by a subcontractor). Moreover, he specifies:

When the C.Y. [cubic yard] of rock produced from the Hard Rock pit and from the other pits are calculated, the following data is revealed:

Hard Rock pit cost = $\$191,712.26 / 46,517 \text{ C.Y.} = \$4.12/\text{C.Y.}$

Other Pits cost = $\$250,312.12 / 181,166 \text{ C.Y.} = \$1.38/\text{C.Y.}$

He concludes, "When one pit shows this much cost in excess of the average of seven other pits, I consider this as an indication of an unusual condition." (Exhibit 223 at 16-17 (& 25).) It is unclear how he derives the figure of \$250,312.12 ($\$435,920.53 - \$191,712.26 = \$244,208.27$) as the cost for pits other than the hard rock pit. The unmentioned figure in the affidavit is the total alleged cost per cubic yard for all pits, utilizing the contractor's figures; that amount is approximately $\$1.91/\text{C.Y.} = \$435,920.53 / 227,683 \text{ C.Y.}$ Also unaccounted for, assuming the correctness of the assertions in the claim involving the development of the red rock pit, are 3,000 C.Y. of material developed from that source, but not utilized (Exhibit 227 at 1-3). With the additional cubic yardage, the overall cost per cubic yard is approximately $\$1.89/\text{C.Y.}$ ($= \$435,920.53 / 230,683 \text{ C.Y.}$).

29. A review of the contractor's internal bid work sheets suggests that the contractor estimated its costs for developing the pits would be $\$1.84/\text{C.Y.}$ This amount represents estimates for driller, r&b, equipment and fuel, and powder, as a component of a line item price. As the contractor's estimator notes, the amount could be marked up to cover "added costs," such as overhead, profit, risk, etc., but, the basic cost elements would "pretty much stay the same once" determined. (Exhibits 207 at 100669, 208 at 100692, 226 at 5 (& 11-13).)

30. Apart from the costs and effort in developing the hard rock pit, the contractor maintains that the hard rock required extra working of the material once in place in the roadbed to generate fines (Exhibit 223 at 21-23). The contractor also maintains that the hard rock on the road caused excessive and unusual and unexpected wear of parts and tires on its various vehicles (Exhibits 223 at 19-21, 232). These comparisons between efforts and wear over various roadways at this project do not convincingly demonstrate the unusual or unexpected nature of the hard rock material. The record does not demonstrate that the rock from the hard rock pit was not suitable for its purpose.

31. The record depicts the hard rock pit as containing rock which was harder and had wider fracture spacing than other sampled rock from on and around the project area (E.g., Exhibit 238 at 6 ("the rock at the Hard Rock pit was the hardest, strongest, and most abrasive of all the rock on the project")). The Board assumes that the hard rock pit did consume more effort per cubic yard of produced rock than other pits. What the record does not convincingly demonstrate is the unusual or unanticipated nature of the rock, particularly given the variable conditions of rock in the project area

(Findings of Fact (FF) 16, 20, 23, 24). Further, while the contractor attributes its costs to the hard rock, the record does not isolate costs to the nature of the rock; that is, the contractor had control over many of its costs (e.g., the use and upkeep of equipment, blasting techniques, and materials). The contractor, not the hard rock, may have been the primary cause of at least some of what the contractor deems to be increased costs. Moreover, given the contractor's alleged costs and pricing (FF 26-29), the record reveals that the contractor's pit development costs incurred for all of the pits together do not significantly differ from its anticipated costs; that is, given the potential variations in necessary efforts between pits, the average level of effort assumed at bidding does not differ significantly from that incurred.

Non-designated sources

32. The contractor has not presented specific evidence comparing the haul distances involving non-designated sources to those anticipated under the contract from designated sources that failed. The contractor has not demonstrated any inaccuracy in the contracting officer's letter of November 16, 1998, which addresses this portion of the contractor's claim:

While it is true that three designated sources were not used, an additional five sources were discovered and developed during the contract. The designated sources, if all had been used, would have created a maximum haul distance of 2.88 miles and an average haul distance of 1.57 miles. The actual sources used created a maximum haul distance of 4.34 miles and an average haul distance of 1.67 miles. This shows that for a portion of the time the hauls were longer than originally planned, but overall the average changed very little. This is due to the shorter hauls created on some headings with additional sources offsetting the longer hauls created towards the tail-end of the project.

(Exhibit 5.50 at 223.) The contractor has referenced no specific evidence to question these figures.

Contract release

33. September 17, 1998, was the final day that the contractor performed work on the contract. The Government conducted the final inspection on September 21, 1998. The Government concluded that all work required under the contract had been performed, although demobilization was not yet complete (Exhibit 5.48 at 216).

34. In a letter dated September 22, 1998, to the Government, the contractor stated:

We appreciated meeting with you the other day to discuss our concerns regarding our impacts caused by (1) the hard rock pit and (2) the added hauling due to the lack of rock in the designated sources. Attached please review the further backup you requested to substantiate our costs and the contractual language allowing for reimbursement of the associated costs[.]

(Exhibit 5.43 at 124.) As detailed in this submission, the contractor seeks to recover its increased costs for producing and utilizing rock from the hard rock pit, as it maintains that the rock differs materially from the rock at other test pits, is of an unusual nature, and differs materially from what would ordinarily be encountered. The contractor also seeks to recover for added haul costs, as it notes that the lack of material at the designated sources has required the contractor to import additional trucks and has decreased its overall haul efficiency. The letter mentions no other basis for relief or other areas of relief based upon Differing Site Conditions or Changes clauses. (Exhibit 5.43 at 124-26.) The supporting documentation accompanying the letter relates to cost impacts from the hard rock pit, added haul costs, geological data, and supporting data regarding invoices, hours, costs, and observations of the contractor (Exhibit 5.43 at 128-208).

35. With a signature and a date of November 4, 1998, the contractor submitted a contract release to the Government. The release states in full:

In consideration of the receipt of final payment in the amount of \$5,676.35 the undersigned hereby releases the United States of America from any and all obligations arising under this contract and any modifications thereof except as reserved below.

Reservations:

[hand written:] South Coast Inc. is requesting a contract modification to compensate for extra haul costs and extra drilling costs per Section H.4, ADiffering Site Conditions@ (FAR 52.236-2) Type 1 and 2.

[hand written:] This request has been presented to the Forest Service in wri[t]ing.

(Exhibit 5.46 at 214.) The contractor has not suggested any document which could serve as the referenced request presented in writing, while the Government states that the reference is to the letter of September 22 (FF 34).

36. By letter dated November 16, 1998, the Government responded to the contractor-s letter of September 22. After questioning the contractor-s selection of pits and conclusions regarding the presence of basalt, the letter states:

there are also several sites on the road system that are not highly fractured, and have high degradation values. Consequently, it would have been reasonable to expect to encounter a Amixed bag@ of rock types and quality, as you did, when constructing 16 miles of road. [The Government-s expert], our Forest Service Geotechnical Engineer, noted other basalt formations on the main road from Kake leading to the project. Some of these basaltic formations were included in the photographs of the 16 sites you provided, but not included in the random sites sampled.

...

While the Ahard rock pit@ may have been time-consuming and costly to drill and shoot, the conditions encountered were within a reasonable variation from what could have been expected from your prebid site visit. Consequently, I find no basis for additional compensation for your work at the Ahard rock pit@.

(Exhibit 5.50 at 222.) Further, the contracting officer concludes that the claim that the hard rock pit constitutes a differing site condition is not supported. The letter states that the material produced from the pit was of a highly desirable quality, as evidenced by the finished product. The letter recognizes that although Athe material from this source was somewhat harder and perhaps more abrasive than that from some developed pit sites on the Kake road system prior to the Shamrock South Roads Project being bid, it is not unusually so.@ (Exhibit 5.50 at 221.)

37. Regarding the contractor's request for \$317,194 for added haul costs due to the failure of three designated sources, the contracting officer states, in part, in the letter of November 16:

While it is true that three designated sources were not used, an additional five sources were discovered and developed during the contract. The designated sources, if all had been used, would have created a maximum haul distance of 2.88 miles and an average haul distance of 1.57 miles. The actual sources used created a maximum haul distance of 4.34 miles and an average haul distance of 1.67 miles. This shows that for a portion of the time the hauls were longer than originally planned, but overall the average changed very little. This is due to the shorter hauls created on some headings with additional sources offsetting the longer hauls created towards the tail-end of the project.

The second to last source discovered and developed on the job was used to construct 5.7 miles of road. While work progressed in this source, two designated sources were explored and not developed. As it became apparent that this source was to be used longer than originally intended and that longer hauls were to be expected, you mobilized three additional haul trucks to the project. You had one month earlier mobilized in another truck to supplement haul, but this was after a head-on accident sent one truck to the shop and another back to Ketchikan.

During the last two months of the project, there were nine trucks on-site, but there were never more than seven hauling at any one time due to normal breakdowns and lack of available drivers. We are willing to compensate you for mobilization/demobilization of the 3 additional trucks for the latter part of the job during longer hauls. Using the figures from . . . your request, the cost to mobilize/demobilize three trucks was \$6,103.50. We are not willing to compensate you for inefficiencies due to longer hauls since the three additional trucks kept you in production mode. The dozer and loader operators were kept busy during normal road construction operations. It was only during days of pipe installations that there were lulls in the loading/hauling/spreading operations, and this would be true on any job.

(Exhibit 5.50 at 223.) Thus, the Government proposed reimbursing the contractor \$6,103.50 as its costs to mobilize/demobilize three trucks.

38. In the letter of November 16, the contracting officer noted the original (in the solicitation and contract as awarded) haul quantity of 341,704 cym (cubic yards per mile) for which the contractor bid \$0.50/cym. Changes were made to this line item in modifications 1, 3, and 6; the resulting figure for the line item became 275,093 cym. Modification 9 reflected the final actual haul quantity for this line item: 362,216 cym, for which the contractor was paid the unit price. The contracting officer looked to the Designed Quantities clause:

These quantities denote the final number or units to be paid for under the terms of the contract. They are based upon the original design data available prior to advertising the project. Original design data include the preliminary survey information, design assumptions, calculations, drawings, and the presentation in the contract. Changes in the number of units SHOWN in the SCHEDULE OF ITEMS may be authorized under any of the following conditions:

(1) As a result of changes in the work authorized by the Contracting Officer.

(2) As a result of the Contracting Officer determining that errors exist in the original design that cause a pay item quantity to change by 15 percent or more.

(3) As a result of the contractor submitting to the Contracting Officer a written request showing evidence of errors in the original design that cause a pay item quantity to change by 15 percent or more. The evidence must be verifiable and consist of calculations, drawings, or other data that show how the designed quantity is believed to be in error.

(Exhibit 109 at 18 (& 106.04 (Methods of Measurement)).) The letter states:

We propose that we use the 15 percent gate as a measure for compensating you for longer hauls you could not have anticipated at the time of bidding. We determined to increase the unit price to compensate you with a more realistic unit price for the longer hauls. To do that we developed a new unit price using bid tables for haul from several jobs recently bid on Kupreanof Island. These include the four low bids on Shamrock South, Bohemia-Portage and Bohemia-Kake projects, which are \$1.38, \$1.48, and \$1.41/CM, respectively. The new average rate we would be willing to use is \$1.42/CYM. These three projects included over 43 miles of new road construction. You (South Coast Inc.) bid on all three of these projects with haul rates of \$.050, \$1.20 and \$1.00/CYM, respectively.

We must pay the contract unit price of \$0.50/CYM for 115% of the Haul quantity in the contract at the time Modification No. 9 was signed; 115% times 275,093 CYM,

or 316,357 CYM. The difference between this amount and the final contract amount is 45,859 CYM. For this amount above 115% we are willing to pay you at the new rate of \$1.42/CYM. Since you have already been paid for the final amount (262,216 CYM) at the bid rate of \$0.50/CYM, the difference between \$1.42 and \$0.50, or \$0.92/CYM would be used with 45,859 CYM to come [sic] arrive at \$42,190.28 as a realistic increase in haul cost.

(Exhibit 5.50 at 223-24.)² Thus, the Government proposed reimbursing the contractor \$42,190.28 to reflect a realistic increase in the contractor's haul costs.

39. Unilaterally-issued modification 10, with an effective date of January 27, 1999, increases the modified contract price by \$48,293.78 to \$3,175,170.16, without changing the time for performance. The modification specifies:

This change order arose from South Coast Inc., dated September 22, 1998, for an equitable adjustment in the contact price for Haul (pay item 205A(01)). The Contracting Officer, by letter dated November 16, 1998, allowed for the following adjustment for impacts due to increased Haul quantity. This Change Order increases the contract by the amount determined by the Contracting Officer to reasonably be due South Coast Inc., in order to allow for timely payment, but is not intended to prevent South Coast Inc. from making a claim for additional compensation for this same work for which it feels it is due. South Coast Inc. may invoice for the additional amount shown below.

Refer to the November 16, 1998 letter from CO for background information and description of the following costs:

Mobilize/demobilize three trucks	\$ 6,103.50
Increased Haul cost	<u>\$42,190.28</u>

² The contracting officer's use of the modified and not the original haul quantity to determine a deviation of greater than 115% is not in keeping with paragraphs (2) and (3) of the clause, which look to the designed quantities at the time of bidding. However, the stated intent of the payment is to compensate for longer hauls the contractor could not have anticipated at the time of bidding, utilizing a more realistic unit price for the longer hauls. The contracting officer appears to justify the proposed payment under paragraph (1).

\$48,293.78 Total amount due

(Exhibit 7.2 at 952-53.)

40. In a letter dated February 12, 1999, to the contracting officer, the contractor accepts the Government offer of \$48,293.78 to settle three items under added haul costs: deletion of one pit (45845), deletion of two other pits (at mile post (MP) 6.11 and 7.19), and the mobilization/demobilization of extra trucks. The contractor pursues \$31,501 for inefficiency of two pieces of equipment (980 & D-7), and \$28,706 for extended job duration. The contractor also states other reasons to justify payment: it produced but did not utilize rock from a pit (at MP 3.51) due to poor quality, expense and inefficiency of installing culverts, and increases in airfares and housing. (Exhibit 5.57 at 252-53.) Regarding the alleged hard rock, the contractor states:

The USFS letter further states there are other basalt type materials in Kake. R&M Consultants have acknowledged that pits 7-11 consist of volcanic material but not primarily basalt. They may have intrusions of basalt but it is not the primary material. The hard rock pit from their analysis was the only pit with a primary composition of basalt.

In your letter you state a Type II differing site condition is negated because basalt rock is Ausual[®] and Aordinarily encountered[®] on the Kake road system. Frankly it does not matter if they were all basalt. The fact remains that the hard rock pit stands alone from the other rock pits in the efforts it took to drill and shoot the rock. It is unusual in this regard. It would be even more unusual, if indeed, it was all the same type of rock.

.....

Contractors have limited time and resources to determine subsurface material quality on a project prior to bidding. SCI bid this project based on the information obtained from inspections of existing rock pits in Kake, our site visit and our previous experience working in Kake. The overwhelming information obtained from this investigation indicated a marginal quality and easy drilling material, which is how we based our bid. It, however, did not prove out as expected. That is unusual.

(Exhibit 5.57 at 256.)

Allegedly added haul costs

41. The contractor has presented evidence to support its quantum claim relating to the haul costs from non-designated sources. In an affidavit, the contractor's vice president notes that the non-designated sources required the contractor to mobilize additional trucks, and that trucks traveled extra haul mileage between source location and placement (road headings). He recognized that a

contract modification covered the cost of extra trucks and the extra haul distances traveled by those trucks. However, he asserts that the contractor has not been compensated for the inefficiency of the loading equipment and operators of that equipment. (Exhibit 223 at 25-29). In justifying its claim for haul costs, the contractor originally sought relief based upon the difference in loads per day after the designated sources failed (Exhibit 231 at 2). The contractor has modified its claim to incorporate the number of trucks involved. The contractor does not rely upon specific impacted haul loads. Instead, it looks to total haul loads and loads per impacted day to derive a number of impact days. Then the contractor compares the average number of loads per truck per hour when there were no impacts to the haul with when there were impacts to the haul. With these figures, the contractor seeks to recover for claimed inefficiencies of the haul operators, as well as of the equipment and operators utilized to load the haul vehicles. (Exhibits 223 at 25-29, 224 at 13-14, 231). Factually, the analysis is not conclusive or helpful to demonstrate that the Government has failed to fully compensate the contractor for its costs relating to utilizing non-designated sources. The contractor has not accounted for travel distances of the haul trucks or the availability of materials to place in the trucks or the additional trucks in use. The record does not demonstrate that equipment or operators were idle or less efficient because of added haul distances, or that the payment by the Government (FF 39) does not fully compensate the contractor for any and all of its added costs.

Red rock pit

42. The contractor posits that the rock developed at the red rock pit, a designated source, was of marginal suitability for the project, as roads constructed with this material required capping from other sources. The contractor seeks to recover its costs of developing approximately 3,000 cubic yards of material at the red rock pit which it abandoned; the contractor utilized rock developed from other sources thereby avoiding the need (and time and expense) to cap the red rock. (Exhibit 224 at 14-15.)

43. The record does not credibly support the contractor's contention that the 3,000 cubic yards of unused material were not suitable for road construction. There is no indication that the contractor requested that the Government inspect the material to determine its suitability for use or to confirm the quantity. Further, assuming that the 3,000 cubic yards of material exists and is unsuitable for road construction, the record does not demonstrate that the contractor incurred specific costs to create the unused material. That is, in producing the utilized rock from the red rock pit, the unused material was produced at the same time. The record does not demonstrate that the 3,000 cubic yards of material was other than the usual results of blasting operations in the area. In short, the contractor has not demonstrated that it incurred any increased or specific level of effort to produce the unused material when it produced the material utilized. (E.g., Exhibit 223 at 8-9 (& 17) (In general, more rock will be recovered than the shot plan indicates on less competent pits and less rock than the shot plans indicate will be recovered from harder, more massive pits.))

The claim and the dispute

44. Seeking to recover \$285,078, the contractor submitted a certified claim, dated March 22, 1999, to the contracting officer. This amount is broken down as follows:

\$ 60,207.00	inefficiency and extended job duration due to added haul
214,066.00	hard rock pit
885.44	invoice from R&M for rock testing
5,010.00	estimated 3,000 cubic yards of shot rock in red rock pit
3,500.00	extra camp costs associated with work in hard rock pit
1,409.31	15% of items (3), (4), and (5) above for OH&P
\$285,078.00	total (rounded up)

(Exhibits 5.43, 5.61.)

45. By decision dated May 24, 1999, the contracting officer states that the contractor had not reserved in the release the amount sought for the unutilized red rock pit material. The contracting officer states that he is precluded from considering a claim which does not relate to the reservation in the release, but that, apart from the release, the contractor lacks entitlement to the requested recovery. The contracting officer denies relief on each portion of the claim. (Exhibit 3.)

46. The Board received the contractor's appeal on July 21, 1999.

DISCUSSION

The contractor seeks to recover for what it describes as increased and uncompensated costs incurred with regard to the hard rock pit, utilization of non-designated sources when some designated sources did not produce suitable material, and the red rock pit.

Hard rock pit

The contractor claims entitlement to relief because of a type 2 differing site condition.³ It maintains that the hard rock pit contained rock that was unusual in nature, differing materially from both normal conditions and other material sources on the project. The contractor describes the unusual nature in terms of strength, hardness, and abrasiveness. It contends that the rock was unusually difficult to produce, requiring increased drilling and blasting costs, creating excessive wear on equipment and tires, and impacting its schedule adversely. (Contractor Brief at 32.)

A type 2 differing site condition is defined in the clause as unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally

³ The rock from the hard rock pit was suitable for use; the material satisfied the contract guarantee in the Designated Sources clause (FF 5). Therefore, a type 1 differing site condition does not exist to support recovery for costs of generating fines and tire wear said to have arisen from the hard rock pit. To the extent that a portion of the claim is couched in language seeking relief under a type 1 differing site condition, the Board denies the claim.

recognized as inhering in work of the character provided for in the contract.@ (FF 9). In order to qualify as a type 2 differing site condition, the unknown physical condition must be one that could not be reasonably anticipated by the contractor from his study of the contract documents, his inspection of the site, and his general experience[,] if any, as a contractor in the area.@ Perini Corp. v. United States, 180 Ct. Cl. 768, 381 F.2d 403, 410 (1967).

Factually, the record does not support the contractor's claim. As the experts agree, the project area covers an area which is complex geologically, which was not precisely mapped due to a lack of exposure of the materials (FF 23-24). The record does not demonstrate that the rock encountered was unusual for the area. Nothing in the contract documents, the site inspection, or the contractor's experience in the area could reasonably eliminate the possibility of encountering the hard rock with wide joint spacing at the project site.

Although the hard rock pit was more difficult for the contractor to drill and work with than the other pits, the record does not demonstrate that such rock was unusual, so as to be unexpected when developing sources in the given area of Alaska. One should not have anticipated encountering only rock which was readily drilled and easily worked. Rather, the then-existing geological maps depict uncharted areas of potentially mixed rock types with unknown strengths and seam spacing. The record does not demonstrate that it was reasonable for the contractor to conclude that all rock could be developed with average or easier than average efforts.

The contractor maintains that the hard rock pit material was unusual and markedly different from other material sources on the project, and that its development costs of the hard rock pit far exceeded its development costs of the other pits (Contractor's reply brief at 42-43). This comparison to other developed pits at the site is inadequate to demonstrate the existence of a differing site condition under the clause. The Differing Site Conditions clause directs that for a contractor to recover, the conditions at the site, must be of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.@ As case law directs, the conditions must be unanticipated for the project. A comparison to other work on the project does not mean that the level of difficulty was or should have been unanticipated. Work of differing degrees of difficulty should have been anticipated; such is not uncommon.

To the extent that the contractor relies upon its costs to establish entitlement and quantum, the Board reaches a different conclusion. The record suggests that the contractor anticipated excavating rock of the nature encountered. In its price estimates for the overall rock production, the contractor recognized that it could encounter different types of rock, some easier and some more difficult to excavate. Its overall anticipated price of rock production was \$1.84/cubic yard (FF 29). Utilizing the contractor's figures, its cost of production was approximately \$1.91/cubic yard, or \$1.89/cubic yard if one includes in the calculation the unused rock developed at the red rock pit (FF 28). This variation from the anticipated cost of production of between 2 and 4 percent, particularly when the anticipated cost is an average which does not incorporate a risk factor for encountering other than the assumed mix of easier and more difficult to excavate rock, does not demonstrate an unexpected encounter with hard rock. The Differing Site Conditions clause permits a contractor to recover costs

which it should not have anticipated incurring because encountering a condition was not expected; the clause is not intended to shift risks of business judgment from the contractor to the Government.

The contractor has not demonstrated entitlement to recover for the alleged differing site condition. The Board denies this aspect of the claim.

Use of non-designated sources

The contractor seeks to recover for inefficiencies described as longer turnaround times for its trucks, inefficiencies in its loading equipment and operators, and for schedule impacts relating to the alleged inefficiencies, all said to have arisen from the use of non-designated sources.

The contract identifies six sources for borrow material. Of these six, the contractor successfully developed only three; it developed five non-designated sources when three of the designated sources were not suitable. By a contract modification, the contractor recovered mobilization/demobilization costs for three trucks for use at the project, and additional haul costs. (FF 10, 34, 37-40.)

The record does not support the contractor's claim; the contractor has not demonstrated that it incurred costs which have not been compensated. By contract modification, the Government has compensated the contractor for additional trucks and has repriced upward the haul price paid to the contractor for a portion of the haul (FF 39). Contrary to an assumption of the contractor, the non-designated sources did not result only in longer hauls (FF 32). Both shorter and longer hauls resulted from use of the non-designated sources in comparison to the designated sources, and the average haul distance increased from 1.57 to 1.67 miles (FF 32). By contract modification, the contractor received \$42,190.28 as compensation for increased hauling costs, reflecting an increase in the per cubic yard mile payment for a portion of the work. The record does not demonstrate that the contractor incurred costs because of the non-designated sources in excess of the payment received. The record does not demonstrate that the utilization of the non-designated sources resulted in uncompensated inefficiencies--with extra trucks to haul and an increase in the haul rate for a portion of the hauling, the contractor has not shown that its operations were adversely impacted by the new locations of sources. (FF 32, 41.)

The record does not demonstrate that use of non-designated sources resulted in idle equipment and operators (or more particularly idle equipment and operators which remains uncompensated). Therefore, the Board denies this aspect of the appeal.

Red rock pit

The contractor seeks to be paid for what it describes as costs of producing 3,000 cubic yards of unused material from the red rock pit (a designated source) which it produced but did not use because of the marginal suitability of the material.

The Government asserts that the contractor is not entitled to recover for its red rock pit claim because (1) in the release the contractor did not reserve its right to seek these cost, and (2) the contract does not provide for payment of unused developed material. In response, the contractor

states that it did sign a contract release; however, it reserved its rights to pursue types 1 and 2 differing site condition claims. It maintains that it seeks relief under the Differing Site Conditions clause, pursuant to its reserved right. Further, it states: ASCI experienced additional cost in performing its work in developing the rock at the Red Rock pit. That work was never compensated. SCI is entitled to compensation for the developed rock at the Red Rock pit which was not used. (Contractor's reply brief at 41-42.)

The release (FF 35) is more specific than the contractor acknowledges. The contractor reserves from the release only those items relating to extra haul costs and extra drilling costs under the Differing Site Conditions clause, and only those items identified in the request presented in writing to the Forest Service. The contractor has identified no writing to the Forest Service at the time of or before the release which seeks compensation for the red rock pit claim. (FF 35, 43). Accordingly, under the terms of the release, the contracting officer correctly concluded that relief is not available.

Even if one views the release as less encompassing, the reservation is limited to extra haul costs and extra drilling costs under the Differing Site Conditions clause. In seeking compensation relating to the red rock pit, the contractor makes no attempt to limit the relief it seeks to the extra drilling costs. It seeks relief based upon what it describes as its average drilling costs for all pits it developed (with the exception of the hard rock pit). The contractor has not demonstrated that it incurred any particular cost to produce the unused material, which apparently was produced in the course of generating the material from the red rock pit which was used.

Moreover, the contract specifically disallows reimbursement for unused material (FF 8). The contractor has not shown entitlement under the Differing Site Conditions clause. The contractor provided no notice prior to contract completion that it viewed the 3,000 cubic yards of material as unsuitable for use. Thus, there is no verification of the contractor's assertion of the volume of the material or that it was not suitable for use, or that it was other than excess material produced in the normal course of blasting.

The contractor has not convincingly supported this aspect of its claim with regard to entitlement or quantum.

Costs claimed to relate to the hard rock pit

The contractor also seeks to be reimbursed for rock testing and extra camp costs, said to be incurred because of the conditions of the hard rock pit. The Board has concluded that the hard rock pit does not represent a differing site condition. The contractor has not demonstrated a basis for relief under the fixed-price contract. The claimed inefficiencies and additional costs are contractor-assumed risks, not to be separately compensated by the Government. In any event, the record does not demonstrate that the activities at the hard rock pit extended the job duration or caused the contractor to incur other than anticipated costs.

DECISION

The Board denies this appeal.

JOSEPH A. VERGILIO

Administrative Judge

We concur:

HOWARD A. POLLACK

Administrative Judge

ANNE W. WESTBROOK

Administrative Judge

Issued at Washington, D.C.

June 25, 2002